

- SUBJECT:** Amending charity bingo laws and establishing a gross-receipts tax
- COMMITTEE:** Licensing and Administrative Procedures — committee substitute recommended
- VOTE:** 6 ayes — Flores, Hamilton, Eissler, Goolsby, Homer, D. Jones
- 0 nays
- 3 absent — Raymond, Driver, Wise
- WITNESSES:** For — Glen Castlebury, Texas Elks State Association; (*On committee substitute:*) Stephen Fenoglio, for more than 950 charitable and business organizations
- Against — Weston Ware, Texans Against Gambling and Texas Baptist Christian Life Commission
- On — Billy Atkins, Texas Lottery Commission
- BACKGROUND:** Since 1981, state-licensed nonprofit organizations in Texas have been allowed to conduct bingo games if voters in the local political subdivision approve the games in an election. Proceeds from bingo games must be spent on charitable purposes, although conductors of the games may deduct certain types of expenses before distributing money for charitable endeavors. About 200 jurisdictions in Texas have approved charitable bingo. In 2001, charitable bingo generated about \$567 million in revenue, of which about \$34.4 million was spent on charitable purposes.
- The Texas Lottery Commission regulates bingo and licenses the nonprofit organizations (called conductors), the lessors of bingo halls, manufacturers and distributors of bingo supplies, and providers of automated bingo system services. Lessors can be either be charities that lease space to other charities to hold bingo games or for-profit commercial lessors that lease bingo halls to the nonprofit groups that operate the games. The Lottery Commission regulates prizes, accounting methods, and other details of the games.

Occupations Code, sec. 2001.101 establishes what types of organizations can be licensed to conduct bingo. They include religious societies that have existed in Texas for at least eight years, certain nonprofit organizations that support medical research and treatment programs, nonprofit fraternal organizations, nonprofit veterans organizations, and volunteer fire departments. Nonprofit organizations must have tax exempt status under the Internal Revenue Code, sec. 501©).

Sec. 2001.454 lists activities that define the charitable purposes to which the proceeds from bingo must be devoted. It requires that net proceeds be directed to a cause, deed, or activity that:

- benefits needy or deserving people in Texas by enhancing their opportunity for religious or educational advancement; relieving them from disease, suffering, or distress; contributing to their physical well-being; helping them establish themselves in life as worthy and useful citizens; or increasing their comprehension of and devotion to the principles on which the United States was founded and enhancing their loyalty to their government; or
- initiates, performs, or fosters worthy public works or enables or furthers the erection or maintenance of public structures in Texas.

DIGEST:

CSHB 2517 would make various changes to the statutes governing charitable bingo in Texas, including:

- establishing a gross-receipts tax on sales of bingo equipment by manufacturers and eliminating the current sales tax paid by distributors of bingo equipment;
- removing from the statutes a list of charitable purposes to which the proceeds from bingo must be devoted;
- allowing the use of gift certificates for bingo games;
- changing the number of licenses that charities could obtain to operate bingo games under certain circumstances;
- defining the authority of the Texas Lottery Commission; and
- establishing a procedure for the commission to issue advisory opinions.

The bill would take effect September 1, 2003.

Gross-receipts tax. CSHB 2519 would establish a gross-receipts tax to be assessed on the sale of bingo equipment by a manufacturer to a licensed distributor in Texas. The tax rate would be the rate that, if applied to the total gross receipts from all sales of bingo equipment in the past year, would generate the same amount of revenue as the total amount of taxes that would have been imposed for the most recent year on all sales of bingo equipment to organizations, if they had been subject to the state sales tax. The commission would have to set the tax rate for each calendar year by January 1 of that year. Bingo equipment would be exempt from state sales taxes if purchased by a licensed bingo organization and used exclusively to conduct authorized bingo games. The tax would apply beginning January 1, 2004.

Use of bingo proceeds. The bill would remove from current law the list of causes, deeds, and activities that define the charitable purposes to which the proceeds from bingo games must be devoted. Instead, the bill would require that organizations devote net bingo proceeds and net proceeds from the rental of premises to charitable purposes of the organization that are directed to a cause, deed, or activity that is consistent with the federal tax exemption under which the organization qualified as a nonprofit organization under Internal Revenue Code, sec. 501©).

Gift certificates. CSHB 2519 would authorize bingo conductors and licensed commercial lessors to issue and accept gift certificates for people to enter bingo premises and to play bingo games, including instant bingo. The cost of bingo gift certificates would be considered an authorized expense that could be deducted from net bingo proceeds. Organizations and lessors would have to keep records the commission required relating to the gift certificates.

Licenses to operate bingo games. An organization that held a regular license to conduct bingo could receive up to 12 temporary licenses, instead of six, during the 12-month period following the issuance or renewal of a license. An organization could apply for all or some of the licenses in one application without specifying the dates or times that the organization would use the licenses. Before using the licenses, the organization would have to notify the commission of the dates and times of the additional games.

CSHB 2519 would allow bingo operators and commercial lessors to file a joint application to take over the time and location of a bingo game that had

been canceled because another bingo conductor had stopped or would be stopping a bingo game. The commission would have to act on the application within 10 days of the date it was filed or the date that the second organization stopped conducting bingo at the location. If the commission did not meet the deadline, the organization could act as if it had approval and could conduct bingo until the commission acted. The commission could issue temporary licenses in addition to the number of temporary licenses authorized by other provisions to a bingo conductor that took over the time and location of a conductor that ceased operations.

From September 1, 2003, until September 1, 2005, the commission could not issue new commercial lessor licenses unless there was no licensed commercial lessor with premises in the county in which the new lessor proposed to locate.

Commission's authority. The commission would have no authority over any matter relating to the premises, personnel, or activities of an authorized commercial lessor or bingo conductor unless that authority expressly was granted by statute or was necessary to administer statutes. The commission would have no authority over any person engaged in a business that was not subject to the statutes governing bingo or the lottery.

Advisory opinions from bingo division. People could request from the director of the bingo division an advisory opinion about compliance with the laws and rules. The director would have to respond to a request within deadlines set by the bill. People who requested opinions could rely on them if their conduct was substantially consistent with the opinion.

Other provisions. CSHB 2519 would make many other changes to the statutes governing bingo, including:

- adding the following items to the list of items that are considered approved expenses that can be paid for in connection with a bingo game: maintenance of premises and equipment; fees for sales personnel; costs of attending a bingo seminar or convention; debit-card transaction fees; and salaries for a manager to act as the operator for conducting, promoting, or administering bingo;

- requiring the commission to establish a registry of approved bingo workers;
- allowing organizations 72 hours to deposit funds from bingo games that are paid with a debit card, instead of requiring that they be made the next business day;
- adding licensed commercial lessors to the list of those who can advertise bingo;
- allowing two or more licensed organizations conducting bingo at the same premises to hire bingo employees jointly;
- changing the day that certain taxes and fees are due from on or before the 15th day of certain months to the 25th day;
- allowing issuance of licenses that would be effective for two years instead of one year and allowing a licensee who wanted a two-year license to pay twice the annual fee plus another charge;
- prohibiting officers or investigators employed by the commission from carrying a firearm or badge and from wearing a hat, uniform, or other clothing with an insignia indicating the person's position while conducting routine inspections;
- prohibiting the commission from prohibiting a bingo operator responsible for conducting, promoting, or administering bingo from acting as a bingo caller;
- requiring the commission to support the efforts of licensed organizations to develop and offer new types of bingo games and to apply new technology to the games;
- requiring that leases, like sales, of bingo supplies or equipment to a license holder be subject to terms for immediate payment or payment within 30 days of delivery; and
- eliminating a current restriction that no more than 40 percent of the people attending a bingo occasion can use electronic or mechanical card-minding devices and repealing the current limit of no more than five pull-tab dispensers operating on one premise.

**SUPPORTERS
SAY:**

CSHB 2519 would make bingo operations more efficient and would clear up confusion among operators, distributors, and lessors about several parts of the current statutes. Also, it would benefit the charities that operate bingo games and their charitable endeavors by allowing more flexibility in how the games are operated and changing the tax structure applied to the industry. This could help stop a recent downward trend in bingo proceeds.

According to the fiscal note, CSHB 2519 would have no significant fiscal implication to the state. The Lottery Commission could adjust fees to offset any revenue loss or increased cost associated with implementing the bill.

Gross-receipts tax. The manufacturer's gross-receipts tax established by CSHB 2519 would be a more efficient way to tax bingo equipment and supplies and a more efficient way to collect the tax, while possibly helping bingo charities obtain more funds to distribute for their charitable purposes. Currently, distributors of bingo supplies and equipment must pay state sales taxes on sales of items such as machines that mix up bingo balls, daubers to mark bingo cards, and card-minding machines. In turn, the distributors charge this sales tax to the charitable organizations who buy supplies and equipment.

CSHB 2519 would eliminate this tax and establish a gross-receipts tax to be paid by manufacturers of bingo equipment on their sales to distributors. This would be more efficient than the current tax scheme, which requires the 16 distributors in Texas to collect sales tax from approximately 1,500 conductors of bingo games. Under this bill, the 14 manufacturers doing business in Texas would have to collect the tax from only 16 distributors. This would reduce paperwork and administrative costs.

The gross-receipts tax also could benefit the charities because, for competitive reasons, manufacturers might not pass on the whole cost of the tax to distributors, who, in turn, might not pass on the whole cost to charities. This could result in charities retaining more money for their charitable endeavors. It would not be unfair to impose this tax on manufacturers, who are profiting from their sales in Texas and should have to shoulder their fair share of the tax burden.

Because bingo manufacturers, all of which are located outside of Texas, are licensed by a Texas agency, they are subject to state jurisdiction and can be assessed the new tax. The gross-receipts tax would not be burdensome. According to the fiscal note, only about \$250,000 in taxes would have to be generated for fiscal 2004-05, a small amount for the manufacturers.

Traditionally, nonprofit organizations do not pay sales tax on items related to their nonprofit purpose. Some argue that because of this exemption, they should not be paying sales tax on bingo equipment, since the proceeds are

used for charitable purposes. Eliminating the sales tax on bingo equipment would extend the current sales-tax exemption for nonprofit organizations to their bingo supplies.

This tax change would be revenue-neutral to the state, because the tax rate would have to be set so that it would generate the same amount of revenue as the current sales tax on bingo equipment would generate.

Use of bingo proceeds. CSHB 2519 would clear up confusion over how proceeds from bingo can be used, but it would not change the eligibility requirements that define what type of organization can conduct bingo in Texas. This change would not expand the kinds of organizations that can conduct bingo, nor would it lead to all nonprofits being able to conduct bingo. Bingo conductors still would have to be charities that met other requirements in the code. The change made by CSHB 2519 would address only how charities could spend net bingo proceeds.

Much confusion exists over how charities legally can spend net bingo proceeds for charitable purposes. For example, while most agree that a charity could spend proceeds on a scholarship for a needy young person, questions exist about whether bingo proceeds could be used to publicize the scholarship to schools or even to send a letter to the person who had been awarded the scholarship. CSHB 2519 would clear up this confusion by stating that net bingo proceeds must be used for the charitable purpose of the organization that was used to qualify the organization as a nonprofit organization under the federal tax code. The U.S. Internal Revenue Service (IRS) has described legal uses of funds by 501(c) corporations in publications and opinions.

Gift certificates. Allowing organizations to issue gift certificates would give the organizations more tools to promote bingo and to attract bingo players, which, in turn, could increase the charities' revenue. Bingo operators should be able to use gift certificates as all other industries can. CSHB 2519 would require that organizations keep records of gift certificates to ensure that the revenue was accounted for.

Licenses to operate bingo games. Increasing the number of temporary licenses from six to 12 per year would give organizations more opportunities to offer bingo and to make profits that could be distributed for charities. This

provision would not change how or where games could be operated. CSHB 2519 would reduce bureaucratic paperwork involved in obtaining and using temporary licenses by allowing organizations to apply for all the licenses at once and then to notify the commission when they would be used, instead of applying for each license individually, as they now do.

The bill would help ensure the continuous flow of bingo games by allowing an organization to operate a bingo game in a time slot previously used by another organization if the second organization stopped conducting games. This would eliminate “dead” times when players who are at a hall ready to play must wait until the time that had been used by the second organization has passed and another organization starts a game.

CSHB 2519 would put a two-year moratorium on new commercial lessor licenses in areas that already have commercial lessors to help ensure that these established organizations can weather the current downward trend in bingo revenues and can continue to help charities make profits. If commercial lessors go out of business, charities and their causes are hurt.

Commission’s authority. CSHB 2519 would ensure that the commission regulates only activities over which it has legal authority. The bill’s language would be broad enough to cover all situations in which the commission needs to exercise authority but would help prevent situations in which the commission has tried to regulate activities that should be outside of its realm. For example, how a parking lot is striped or how a snack bar inside a bingo hall is set up should not come under the commission’s authority.

Advisory opinions from bingo division. The bill would ensure that people in the bingo industry who needed information from the commission could obtain it in a timely manner. Sometimes when a licensee asks the commission for a rule or an interpretation, the commission takes a long time to answer the request or does not answer it at all. CSHB 2519 would establish a process and deadlines for the commission to issue advisory opinions so that licensees could get answers to their questions and know how to act within the law.

**OPPONENTS
SAY:**

CSHB 2519 unwisely would move the state further from the original, voter-approved purposes of charitable bingo. It would enhance the profits of commercial bingo entities while doing little to ensure that charities realized

enhanced benefits from bingo. Also, the bill would impose an unfair new tax on bingo manufacturers and could be costly to the Lottery Commission, which would need three additional employees to implement it.

Gross-receipts tax. It would be unfair to create a new tax to be paid by manufacturers of bingo equipment. Manufacturers in no other industry are subject to a gross-receipts tax. Shifting a current tax burden to manufacturers in a specific industry could set an unwise precedent in which other industries would try to avoid paying their fair share of the sales tax by shifting their tax burden to manufacturers.

This tax shift would not result in any benefit for charities, since manufacturers most likely would increase the costs of their products to distributors to pass along the tax, and distributors would do the same.

It is unclear whether the state would have authority to impose a gross-receipts tax on bingo manufacturers, since all of them are located outside of Texas and may not have a physical presence in the state.

Use of bingo proceeds. By deleting the list of approved purposes for the use of net proceeds from bingo, CSHB 2519 could change fundamentally who can operate the games and how they can use the proceeds. The bill could result in any nonprofit that obtained an IRS designation as a 501(c)(3) organization operating bingo and using the proceeds in ways that never were intended by voters who approved charitable bingo.

Gift certificates. Allowing the use of gift certificates would be another unwise expansion of bingo. The state should not allow any activity that could entice more people to gamble and that could lead to more commercialization of bingo.

Licenses to operate bingo games. Allowing an increase in the number of temporary licenses also would be unwise expansion of bingo. Current law sets prudent limits on the number of games that a bingo charity can operate, including limiting temporary licenses to six per year. This is a sufficient number of temporary licenses to allow charities to operate special-occasion games and should not be expanded.

It would be inappropriate for the Legislature to enact a statutory protection of existing commercial lessors by placing a two-year moratorium on new licenses. These for-profit entities should have to operate under a free market system like other businesses.

Commission's authority. The bill's proposed restrictions on the Lottery Commission's regulatory authority could lead to some licensees challenging the commission and trying to stop the commission from performing its job.

Advisory opinions from bingo division. The advisory opinion process set up by CSHB 2519 could result in some licensees trying to get advisory opinions for things that would be handled more through the Administrative Procedures Act. Also, it is unclear what would occur if a licensee did not agree with an advisory opinion issued by the commission, since the opinion would not have been established through the traditional method of rulemaking. It is unclear what would constitute "conduct substantially consistent" with the opinion and who would make that assessment.

NOTES:

The committee substitute made several changes to the original bill, including deleting language that would have established a bingo-related policy board within the Lottery Commission and establishing parameters for the form and use of identification cards for people in the registry of approved bingo players.

The companion bill, SB 1734 by Lucio, has been referred to the Senate State Affairs Committee.